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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,776	02/27/2004	Thomas Wiegand	SCH00169	6147
22862	7590	04/22/2008		
GLENN PATENT GROUP 3475 EDISON WAY, SUITE L MENLO PARK, CA 94025			EXAMINER WEIDNER, TIMOTHY J	
			ART UNIT	PAPER NUMBER
			2619	
			MAIL DATE	DELIVERY MODE
			04/22/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/788,776

**Applicant(s)**

WIEGAND, THOMAS

**Examiner**

Timothy J. Weidner

**Art Unit**

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/US)  
Paper No(s)/Mail Date 7/25/07
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: See Continuation Sheet

Continuation of Attachment(s) 6). Other: Notice of Non-Compliant Amendment.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 1, 7, 18-20, 24-26, 28, 29, and 31 are currently amended.
2. Claims 12-17, 27, and 30 are cancelled.
3. Claims 32-38 are new.
4. Applicant's amendments and arguments, see pages 12 and 13, filed December 19, 2007, with respect to objections to the drawings, specification and claims have been fully considered and are persuasive. The objections of the drawings, specification, and claims have been withdrawn.

### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 29, 31, and 38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
7. Regarding claims 29 and 31, the claims are directed to a computer program, which is not a computer readable medium storing the program executed by a computer, and does not fall into one of the four statutory categories of invention, i.e. it is not a process, machine, manufacture, or composition of matter.
8. Regarding claim 38, the claim is directed to a data carrier, generally defined including electromagnetic carrier waves, which is a form of energy, and does not fall into one of the four statutory categories of invention, i.e. it is not a process, machine, manufacture, or composition of matter.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
11. The claims are generally narrative and indefinite, failing to conform to current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.
12. Regarding claim 1, in lines 19-23 for example, "a data packet of a first data packet type precedes a data packet of a second data packet type that, in accordance with the predetermined order, precedes the first data packet type" is not clear because the first data packet precedes the second data packet, while at the same time the second data packet precedes the first data packet type. It is unclear what is preceding what, whether a data packet or a data packet type, and whether the first precedes the second or vice versa. Further, it is unclear whether a data packet precedes a data packet, or a type precedes a type. All the independent claims have similar deficiencies.
13. Regarding claim 20, in lines 9-11, the limitations "the preceding data packet" and "the current data packet" lack antecedent basis in the claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Weidner whose telephone number is (571) 270-1825. The examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM, EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy J Weidner/  
Examiner, Art Unit 2619

/CHAU T. NGUYEN/  
Supervisory Patent Examiner, Art Unit 2619